

MINUTES
INSOLVENCY LAW COMMITTEE
OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

September 9, 2005

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on September 9, 2005, at the San Diego Convention Center in conjunction with the Annual Meeting of the State Bar of California. The following members attended the meeting in person (at the Convention Center) or by telephone:

Elizabeth Berke-Dreyfuss
Peter Bronson
Michael Buckley
Lisa Fenning
Barry Glaser
Michael Koch
Howard Kollitz
Donna Parkinson
Malhar Pagay
Paul Pascuzzi

Mark Porter
Maria Pum
William Sias
Colin Wied
Mary Jo Wiggins
Craig Wolfe

Russell Clementson (Ex Officio)
Rob Harris (ExComm Liaison)

The following members did not attend the meeting with advance notice: Andy Alper, Molly Baier, Sharon Dutton, Eve Karasik, Dan Schechter, Clifford Stevens and Edward Tredinnick. The following members did not attend the meeting without advance notice: Robert Franklin, and David Shemano.

The Chair called the meeting to order at approximately 9:45 a.m., and noted the absence of a quorum.

Before proceeding with business, the Chair noted that one of the Committee's outgoing members, David Shemano, was to be a panelist on a program to be held at the Annual Meeting on Sunday on International Insolvency and Cross-Border Collateralization.

1. Membership/Officers

The Chair welcomed to the Committee all members of the incoming class, including those attending the meeting in person or by phone: Douglas Boven, Chris Celentino, Ellen Friedman, Justin Harris and Dave Meadows.

The Chair then asked for an update on the Committee's effort to fill its one remaining vacancy with a practitioner from the Eastern District of California. Donna Parkinson and Paul Pascuzzi reported they were speaking with potential candidates but had not yet received a committed indication of interest.

The Chair overviewed the subcommittee's of the Committee and their work, and call for members of the Committee to indicate to Paul Pascuzzi the subcommittee on which they wish to serve, if they had not already done so.

- Education (to be co-chaired by Donna Parkinson and Elizabeth Berke-Dreyfuss) is responsible for proposing and coordinating programs presented by the Committee at the Annual Meeting of the State Bar and the Winter Section Education Institute, as well as for developing and presenting other programs such as the tele-seminar this year on the recently adopted Bankruptcy Reform legislation (the “Reform Legislation”).
- Legislative Subcommittee (chair needed) keeps up to date on proposed legislation affecting debtor-creditor, insolvency and bankruptcy matters and, where the Committee decides to comment, manages comments; the subcommittee also manages or assists with any affirmative legislative proposals which the Committee wishes to submit for consideration and, with appropriate approvals, possible legislative action.
- Publications (chair needed) is responsible for articles and annual review of developments with regard to debtor-creditor, insolvency and bankruptcy matters.
- Website/Outreach (to be chaired by Eve Karasik) is responsible for keeping the website up to date and for building list-serves for updates and communications to the Committee’s constituency list.

2. Committee Meetings for the 2005-2006 Term

Paul Pascuzzi noted that he had circulated a proposed schedule of meetings for the 2005-2006 term. In assembling the schedule, he had tried to avoid conflicts with ExComm’s scheduled meetings. Paul asked for any comments on the schedule to be sent to him as soon as possible. In addition, Paul noted that he intends to continue the format of having three to four in-person sites for meetings, with the “host” site rotating from month to month. The call-in option for members unable to attend at the host or satellite sites in person would also continue. Paul urged members to attend in person at the host or satellite sites where possible to enhance members’ experience in meeting each other face to face and to enhance the working of the Committee. With regard to distribution of materials, he noted the Bar Association has said it will move towards providing space in the members’ area for posting on the web, and it may be possible to post materials there rather than sending them by e-mail.

Lisa Fenning joined the call, and the Chair noted the presence of a quorum.

3. Approval of Minutes: July 29, 2005

The minutes of the July 29, 2005 meeting were approved with corrections.

4. Legislation Subcommittee Report.

(a) S.256 (bankruptcy reform legislation):

(i) Liaison to the Central District Ad Hoc Committee.

Barry Glaser reported that the Ad Hoc Committee for the Central District had met on August 10th and approved new forms for (i) Relief from Stay, (ii) a related Declaration, (iii) a related Notice of Motion and Motion for Unlawful Detainer, (iv) a Proposed Notice of Motion and Motion to Continue the Stay and (v) a Notice of Motion to Impose the Stay.

These forms are to be submitted to the Judges of the Central District and their comments are to be expected within two weeks of submission. He proposed an eBlast sent to update the Constituency List on the status.

(ii) Clean-Up Legislation

The Chair noted that the Committee has been carrying this item on the agenda since the Reform Legislation was enacted. He asked for updates. He indicated rumors are circulating that in light of Hurricane Katrina the effective date of the Reform Legislation might be moved back to provide relief for those hard hit by the hurricane. Lisa Fenning indicated that Congress might also provide some form of natural disaster relief rather than delaying the effective date of the Reform Legislation, to avoid benefiting those who are not directly affected by natural disaster. It was also noted that the Commercial Law League of America is pushing for a clean-up bill, and that there are possible efforts afoot to reduce or change the attorney liability provisions in the Reform Legislation. A member suggested that a bill has been introduced in the Senate as a technical corrections bill, and within that framework, some changes or amendments may be forthcoming.

(iii) Interim Bankruptcy Rules

Lisa Fenning reported that materials have been circulated from the Advisory Committee and a suggestion made for adoption by the various judicial districts. It is expected that courts will adopt the Advisory Committee's emergency rules quickly. This process applies only for the emergency interim rules related to the changes from the Reform Legislation. In addition, other changes to the Bankruptcy Rules and the Federal Rules of Civil Procedure are under consideration by the Advisory Committee on a normal timeline. The Advisory Committee has until February 15, 2006 to finish this larger package, and it is expected those rules, when completed, will be adopted in August of 2006 to become effective thereafter.

(b) § 2115 of the California Corporations Code.

Mark Porter reported that § 2115 of the California Corporations Code, which imposes on certain foreign corporations with significant contacts in California, the obligation to follow California's Corporations Code in certain particulars on corporate governance, had recently been found invalid by the Delaware Supreme Court. Mark had previously circulated an e-mail to the Committee alerting them to the fact that he was discussing with the Corporations Committee efforts to modify or eliminate § 2115. The Chair asked if the Committee believed § 2115 was within its purview, and the sense of the Committee was that no action by the Committee was required on this statute.

(c) California Law Revision Commission.

Mike Koch reported that the Commission is largely quiet at present; however, email updates on the Commission's activities are now available for the asking.

(d) Other State and Federal Bills.

Mike Koch related that there is no news with regard to pending state or federal litigation.

(e) Model Real Estate Order.

The Committee then turned to the Model Real Estate Sales Order. Learning that the Northern District of California Bench and Bar Liaison Committee was working on a general model sales orders, the Committee had taken up the question of how to proceed with its own Model Real Estate Sales Order at its prior meeting. An inquiry had been sent to Ben Young, acting as the Northern District Bench and Bar Liaison, about status, but no response had been received. Chris Celentio sent Ben Young an inquiry on status during this discussion. Barry Glaser raised the question of whether the Committee had attempted to obtain approval of or comments on the order from other judges. He also noted that the Committee's effort had generally been directed at obtaining approval of the form of order from title companies because of troubles encountered in recording sales orders and title transfers in bankruptcy sales. Paul noted that the California Bankruptcy Forum (CBF) also vetted the form of Model Real Estate Sales Order approximately one to two years ago at its annual conference. During the discussion, Chris received a reply from Ben Young asking that the Committee wait for comments from the Northern District, but admitting that no timeline had been set for these comments. The Committee considered this request carefully, but noted if Bench and Bar Liaison created a model sales order, the posted Model Real Estate Sales Order could be revisited and updated to harmonize it as much as possible. The Committee took particular note of the fact the Model Real Estate Sales Order had been posted on the Committee's website for more than a year, and believed that ExComm approval should be requested promptly.

After the above discussion, the Committee, on motion duly made and seconded, approved the Model Real Estate Sales Order and requested that ExComm approve the order. An additional note will be added to the website, warning users of the model order to check their local rules when using it as a starting point.

(f) Update on UCC Committee

Mark Porter reported that he had spoken with the Co-Chair of the UCC Committee at the training and leadership conference in Los Angeles and again at the Business Law Section's breakfast on the morning of the September 9th meeting. It was proposed that the Committee and the UCC Committee make a practice of exchanging agendas, so that they can keep abreast of each other's work and identify issues on which they have common or opposing concerns. It was noted that the UCC Committee is working on secret lien compendium to identify and publish information on hidden liens, and that when the compendium is created, with advance approval of the UCC Committee, it could perhaps be posted on the website and be the subject of an eBlast from the committees. Mark Porter was to check with Paul Barkus to see where the compendium is. The Committee also raised the possibility of a liaison on each other's committee and Paul was to speak with a Co-Chair of the UCC Committee on this point.

5. Education Subcommittee Report.

(a) State Bar 2005 Meeting.

Colin Wied reported on his program on Bankruptcy and Family Law which had been presented at the Annual Meeting. Approximately 70 people, all but five of whom were family lawyers, attended the three-hour program. The panel consisted of a bankruptcy judge, two family law judges, a family law practitioner and a bankruptcy and collections attorney. Materials were viewed as outstanding and quite informative and they are to be posted on the State Bar website soon.

Elizabeth Berke-Dreyfuss is to contact the bar to be sure a link to the audio tape of the program is posted on the website.

(b) Winter Section Education Institute

Liz reported that the program on Overview of the Reform Legislation is to be presented at the Winter SEI, and she will follow up to be sure the event is videotaped. Liz also pointed out to the Committee the general nature of topics actually selected for the SEI and the Annual Meeting over the last couple of years from among submissions.

(c) Other Program Ideas

The Committee then discussed the possibility of doing programs other than at the Annual Meeting or the Winter SEI. Topics could include discharging taxes, which might have a wide-range appeal, but the Business Law Section has rejected the program twice. Perhaps presenters whose topics were not selected (Chuck Rosen for the tax seminar) might be potential speakers at a webcast. Radmilla Fulton was mentioned as someone who might be interested in such a program. Elizabeth Berke-Dreyfuss will check into Chuck's interest and report back in October.

Mark Porter suggested that in light of the general nature of the Winter SEI and Annual Meeting programs, more advanced topics might have to be delivered as tele-seminars or webcasts, but that delivering this content was an important function of the Committee. He suggested a Chapter 13 program, in light of the Reform Legislation.

Chris Celentino suggested that a program concerning construction cases, mechanics' liens and collections and other construction matters might be useful, in light of the frequency of these cases. He has approximately fifty pages of material on the topic. Others agreed with the suggestion, and Mike Buckley and Maria Pum were interested in participating and helping to put such a program together.

William Sias suggested a healthcare program might make a good tele-seminar because of the bankruptcies hitting that sector. Robert Harris indicated that it might be possible to do a joint program on this topic with the Health Care Committee.

Robert Harris also suggested that more advanced programs could be presented in conjunction with local bar associations. He also suggested that the Committee make a practice of alerting panelists solicited for proposed programs at the Winter SEI or the Annual Meeting that the program submission process is very competitive and that proposed programs are often rejected.

(d) Bankruptcy reform legislation – the first 120 days.

The sense of the Committee was that 120 days was too short a period to have meaningful commentary about the operation of the Reform Legislation. Lisa Fenning suggested that it will take at least six to twelve months before published cases will start to appear. It was the sense of the Committee that an evaluation program should cover a longer look-back period and could be a good topic for the Winter SEI in 2007.

6. Electronic Filings

Elizabeth Berke-Dreyfuss reported that the Electronic Case Filing system for the Northern District of California is supposed to go offline on October 16, 2005 at 11:59 a.m. and not become

available again until October 18th because of software upgrades. The timing of this outage raised concerns because the Reform Legislation is to become effective on October 17th, and practitioners might be attempting to beat the clock. The following members were to check the following districts to see if ECF was unavailable in the run up to October 17th: Paul Pascuzzi, the Eastern District of California; Michael Koch, the Southern District of California; Bill Sias, the Central District of California. Liz Berke-Dreyfuss was to follow up for additional information on the Northern District's upgrade plan and the outage.

7. Publications

Mark Porter indicated to the Committee that he was interested in putting together an article for the Business Law News concerning bankruptcy issues related to deposit materials in intellectual property escrows. Paul Pascuzzi noted that the Committee had not published any articles this year and that he was looking for volunteers to head up articles in the 2005-2006 term. The next edition of the Business Law News is expected to be on UCC and secure transactions topics. Articles are supposed to be 2500 to 3000 words on publications.

8. Website and Constituency Report

Mike Buckley reported that the website upgrade was going well and recommended that the Committee seriously consider whether posting information on the Reform Legislation was useful. The Committee has sent seven e-bulletins issued since the last meeting. New members should be added to the constituency list automatically when they become members of the Committee.

Rob Harris suggested that everybody update their State Bar web profile and take advantage of the opportunity to sign up for e-bulletins from other committees, if they so desire. Rob noted that the Committee exceeded usage for its constituency list for all other committees. All committees together sent 954 communications to their list-serves of which 300 were sent by the Insolvency Law Committee. In addition, of 84 total e-bulletins in the last year sent by all committees, 35 were from the Insolvency Law Committee.

Rob noted that the constituency list as it presently stands is the third largest list among the standing committees for the Business Section. However, he also noted that the constituency list has not been growing. There are 570 names on it, and it appears static. Further outreach may need to be undertaken. Paul Pascuzzi noted that the roster of the California Bankruptcy Forum attendees from its annual meeting has been uploaded and invitations are to be sent to members who are not already on the constituency list inviting them to join.

9. Update from ExComm Liaison

On behalf of ExComm, Rob congratulated the Committee on its achievements. Robert Harris noted that this year the template for eBlasts which Peter developed has been copied by other committees of the Business Law Section. The Committee is creating products that others are interested in and is drawing people to the Committee. In addition, he noted the Committee attracted more recruits than there were openings for the 2008 class. (Rob indicated that notification letters had not yet been sent to those not recommended by the Committee, but that these letters would be sent and the names made available to the other standing committees to offer them an opportunity to apply for vacancies on these other committees.

10. New Business

On behalf of the Committee Paul Pascuzzi thanked Peter Bronson as the outgoing Chair for an outstanding year. He also thanked the chairs of the subcommittees for their work during the year. Peter Bronson commended the members of the Committee for being a hard-working group and thanked them and Robert Harris for their work during the year. He also thanked the retiring members of the Committee whose terms ends at the conclusion of the Annual Meeting for their work and service to the Committee.

11. Adjournment.

The meeting then adjourned at approximately 12:45 p.m.

► **The next meeting will be October 21, 2005, Wendel Rosen Black & Dean, 111 Broadway Street, 24th Floor, Oakland, California 94607, phone: 510-834-6600.**

Mark Porter, Secretary